

FRANKFURT KURNIT KLEIN & SELZ, P.C.
Edward H. Rosenthal
Beth I. Goldman
488 Madison Avenue, 10th Floor
New York, New York 10022
Phone: (212) 980-0120
Fax: (212) 593-9175

*Attorneys for Defendants
Scholastic Corp. and Scholastic Inc.*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
PALMER KANE LLC,	:
	:
Plaintiff,	:
	:
-against-	:
	:
SCHOLASTIC CORPORATION; SCHOLASTIC INC., and CORBIS CORPORATION	:
	:
Defendants.	:
-----X	

12 Civ. 3890 (TPG)

**ANSWER
TO PLAINTIFF'S SECOND
AMENDED COMPLAINT**

Defendants Scholastic Corp. and Scholastic Inc. ("Defendants"), by their attorneys,
Frankfurt Kurnit Klein & Selz, P.C., for their answer to the Second Amended Complaint
("Complaint") filed by Palmer Kane LLC, respond and allege as follows:

JURISDICTION AND VENUE

1. Deny the allegations contained in Paragraph 1 of the Complaint.
2. Paragraph 2 of the Complaint contains legal conclusions as to which no response is required.
3. Paragraph 3 of the Complaint contains legal conclusions as to which no response is required, but to the extent a response is required, Defendants deny the allegations contained in Paragraph 3 of the Complaint.

THE PARTIES

4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint.

5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Complaint.

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Complaint, except deny the allegations of copyright infringement contained therein.

10. Deny the allegations contained in Paragraph 10 of the Complaint, but aver that Scholastic Inc., a wholly-owned subsidiary of Scholastic Corporation, is a publisher and distributor of children's books and other media, and a leader in educational technology-based learning materials, technology and service, and supplemental educational materials.

11. Deny the allegations of Paragraph 11 of the Complaint and aver that Scholastic Inc. is a wholly-owned subsidiary of Scholastic Corporation.

12. Deny the allegations contained in Paragraph 12 of the Complaint, and aver that Scholastic Inc., a wholly-owned subsidiary of Scholastic Corporation, is a publisher and

distributor of children's books and other media, and a leader in educational technology-based learning materials, technology and service, and supplemental educational materials.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint.

FACTS

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint and refer to the documents described therein for the contents thereof.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Complaint and refer to the documents described therein for the contents thereof.

17. Deny the allegations contained in Paragraph 17 of the Complaint.

18. Deny the allegations contained in Paragraph 18 of the Complaint.

19. Deny the allegations contained in Paragraph 19 of the Complaint, and refer to the documents described therein for the contents thereof.

20. Deny the allegations contained in Paragraph 20 of the Complaint.

21. Deny the allegations contained in Paragraph 21 of the Complaint, and refer to the documents referenced therein for the contents thereof.

22. Deny the allegations contained in Paragraph 22 of the Complaint, and refer to the documents and website referenced therein for the contents thereof.

23. Deny the allegations contained in Paragraph 23 of the Complaint, and refer to the documents and websites referenced therein for the contents thereof.

24. Deny the allegations contained in Paragraph 24 of the Complaint, and refer to the documents and websites referenced therein for the contents thereof.

25. Deny the allegations contained in Paragraph 25 of the Complaint, and refer to the documents and websites referenced therein for the contents thereof.

26. Deny the allegations contained in Paragraph 26 of the Complaint, and refer to the documents and websites referenced therein for the contents thereof.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27 of the Complaint.

28. Deny the allegations contained in Paragraph 28 of the Complaint, and refer to the documents and website referenced therein for the contents thereof.

29. Deny the allegations contained in Paragraph 29 of the Complaint, and refer to the documents and website referenced therein for the contents thereof.

30. Deny the allegations contained in Paragraph 30 of the Complaint, and refer to the documents and website referenced therein for the contents thereof.

31. Deny the allegations contained in Paragraph 31 of the Complaint, and refer to the documents and website referenced therein for the contents thereof.

32. Deny the allegations contained in Paragraph 32 of the Complaint, and refer to the documents referenced therein for the contents thereof.

33. Deny the allegations contained in Paragraph 33 of the Complaint, and refer to the documents referenced therein for the contents thereof.

34. Deny the allegations contained in Paragraph 34 of the Complaint, and refer to the documents described therein for the contents thereof.

35. Deny the allegations contained in Paragraph 35 of the Complaint, and refer to the documents described therein for the contents thereof.

36. Deny the allegations contained in Paragraph 36 of the Complaint, and refer to the documents described therein for the contents thereof.

37. Deny the allegations contained in Paragraph 37 of the Complaint, and refer to the documents and websites referenced therein for the contents thereof.

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 38 of the Complaint, and refer to the documents and website referenced therein for the contents thereof.

39. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 39 of the Complaint, and refer to the documents and website referenced therein for the contents thereof.

40. Deny the allegations contained in Paragraph 40 of the Complaint, and refer to the documents and website referenced therein for the contents thereof.

41. Deny the allegations contained in Paragraph 41 of the Complaint, and refer to the documents and website referenced therein for the contents thereof.

42. Deny the allegations contained in Paragraph 42 of the Complaint, and refer to the documents and website referenced therein for the contents thereof.

43. Deny the allegations contained in Paragraph 43 of the Complaint, and refer to the documents and website referenced therein for the contents thereof.

44. Deny the allegations contained in Paragraph 44 of the Complaint, and refer to the documents and website referenced therein for the contents thereof.

45. Deny the allegations contained in Paragraph 45 of the Complaint, and refer to the documents referenced therein for the contents thereof.

46. Deny the allegations contained in Paragraph 46 of the Complaint, and refer to the documents and website referenced therein for the contents thereof.

47. Deny the allegations contained in Paragraph 47 of the Complaint, and refer to the documents and website referenced therein for the contents thereof.

48. Deny the allegations contained in Paragraph 48 of the Complaint, and refer to the documents and website referenced therein for the contents thereof.

49. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49 of the Complaint, and refer to the documents referenced therein for the contents thereof.

50. Deny the allegations contained in Paragraph 50 of the Complaint, and refer to the documents and website referenced therein for the contents thereof.

51. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 of the Complaint, and refer to the documents referenced therein for the contents thereof.

52. Deny the allegations contained in Paragraph 52 of the Complaint, and refer to the documents and website referenced therein for the contents thereof.

53. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53 of the Complaint and refer to the documents referenced therein for the contents thereof.

54. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54 of the Complaint.

55. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 55 of the Complaint.

56. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 56 of the Complaint.

57. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 57 of the Complaint and refer to the documents referenced therein for the contents thereof.

58. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 58 of the Complaint.

59. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 59 of the Complaint.

60. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 60 of the Complaint and refer to the documents referenced therein for the contents thereof.

61. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 61 of the Complaint.

COUNT I
(COPYRIGHT INFRINGEMENT BY SCHOLASTIC)

62. Defendants repeat and reallege their responses to the allegations set forth in paragraphs 1 through 61 as if fully set forth herein.

63. Paragraph 63 contains a legal conclusion to which no response is required, but to the extent a response is required, Defendants deny knowledge or information sufficient to form a belief as to the allegations contained therein.

64. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 64 of the Complaint.

65. Deny the allegations contained in Paragraph 65 of the Complaint.

66. Deny the allegations contained in Paragraph 66 of the Complaint.

67. Deny the allegations contained in Paragraph 67 of the Complaint.

68. Deny the allegations contained in Paragraph 68 of the Complaint.

69. Deny the allegations contained in Paragraph 69 of the Complaint.

COUNT II
(BREACH OF CONTRACT AGAINST CORBIS)

70. Defendants repeat and reallege their responses to the allegations set forth in paragraphs 1 through 69 as if fully set forth herein.

71. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 71 of the Complaint.

72. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 72 of the Complaint.

COUNT III
**(BREACH OF IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING
AGAINST CORBIS)**

73. Defendants repeat and reallege their responses to the allegations set forth in paragraphs 1 through 72 as if fully set forth herein.

74. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 74 of the Complaint.

75. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 75 of the Complaint.

76. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 76 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim upon which relief may be granted as to some or all of its claims.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's pleading admits that some or all of the uses were licensed or otherwise permitted uses under the Copyright Act.

THIRD AFFIRMATIVE DEFENSE

To the extent that Plaintiff's claims relate to Defendants' reuse of a photograph in a later edition, revised version, or an electronic version of a work for which Scholastic had previously licensed a photograph, such re-use is non-infringing pursuant to the revision privilege contained in Section 201(c) of the Copyright Act.

FOURTH AFFIRMATIVE DEFENSE

Defendants are not liable for the sale by a reseller or other third party of publications that include Plaintiff's photographs.

FIFTH AFFIRMATIVE DEFENSE

Defendants had an implied license to use the images and/or used the images with permission from Plaintiff's agent who had apparent authority to grant such permission.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims, including without limitation its claim to statutory damages and/or attorney's fees, are barred in whole or in part because Plaintiff failed to register copyright in some or all of the works at issue before the alleged commencement of the infringement or within 3 months after the first publication of the work pursuant to 17 U.S.C. § 412.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable three year statute of limitations for a claim of copyright infringement. 17 U.S.C. § 507(b).

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff has known or should have known about the use of its images since the 1990s and/or early 2000s and has acquiesced to such use, thus its claim is barred by the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff has known or should have known about the use of its images since the 1990s and/or early 2000s and has acquiesced to such use, thus its claim is barred by the doctrines of waiver, acquiescence, and estoppel.

JURY DEMAND

Defendants demand a trial by jury of all issues so triable.

WHEREFORE, Defendants demand a judgment dismissing Plaintiff's Complaint, along with an award of costs, disbursements and reasonable attorneys' fees, in addition to such other relief as this Court deems just and proper.

Dated: New York, New York
June 14, 2013

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: 
Edward H. Rosenthal
Beth I. Goldman
488 Madison Avenue, 10th Floor
New York, New York 10022
Tel. (212) 980-0120
Fax: (212) 593-9175
erosenthal@fkks.com

*Attorneys for Defendants
Scholastic Corp. and Scholastic Inc.*

To: Clyde A. Shuman
Pearl Cohen Zedek Latzer LLP
1500 Broadway, 12th Floor
New York, New York 10036
clydes@pczlaw.com

Sibley Reppert
Pearl Cohen Zedek Latzer LLP
50 Congress Street, Suite 1040
Boston, MA 02109
sibleyr@pczlaw.com